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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/380,447	09/01/1999	Sachdev S. Sidhu	P1581R2	2633
23552 7590 02/01/2007 MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			EXAMINER STEELE, AMBER D	
			ART UNIT 1639	PAPER NUMBER
			MAIL DATE 02/01/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	09/380,447	SIDHU ET AL.	
	Examiner	Art Unit	
	Amber D. Steele	1639	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 November 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 16 January 2007. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☒ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): 35 USC § 102(e).
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____
Claim(s) objected to: _____
Claim(s) rejected: 1, 3, 4, 7-9, 11, 12, 30-33, 44-47 and 55-58.
Claim(s) withdrawn from consideration: _____

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: please refer to the attached "Advisory Action Continued".
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☒ Other: please refer to the attached "Advisory Action Continued".


MARK L. SHIBUYA
PRIMARY EXAMINER

Advisory Action Continued

1. Please note that the examiner for the present application has changed. However, the Technology Center (TC1600) and the art unit (AU1639) have remained the same.
2. The amendment filed November 13, 2006 under 37 CFR 1.116 in reply to the final rejection has been considered but is not deemed to place the application in condition for allowance and will not be entered because of the following:
 - a. The proposed amendment requires further consideration and/or search (e.g. the new limitation in claim 30 regarding zj-2 and I2-2 filamentous phage).
 - b. The proposed amendment may necessitate the modification of outstanding rejection(s) to address the new limitation (e.g. the new limitation in claim 30 regarding zj-2 and I2-2 filamentous phage).
 - c. The proposed amendment may necessitate the raising of new prior art rejections and/or 112 issues (e.g. the new limitation in claim 30 regarding zj-2 and I2-2 filamentous phage).
 - d. There is no convincing evidence under 37 CFR 1.116(b) why the proposed amendment was not earlier presented.
 - e. Applicants arguments regarding the rejection of claims 1, 3-4, 7-9, 11-12, 30-33, 44-47, and 55-58 under 35 U.S.C. § 112, first paragraph (written description) were considered,

but are not persuasive and is therefore **maintained** for the reasons of record. In addition, applicants contend that “the Examiner has acknowledged that the specification provides sufficient written description for a variant of a wild type major coat protein of a filamentous phage (Office Action at the sentence spanning pages 10 and 11)”. It is the examiner’s position that a single example of a single variant major coat protein of filamentous phage does not provide sufficient written description particularly in view of the disclosure of Williams et al. (cited in the previous Office action page 12) which states that some mutations or variations are deleterious. It is noted that the Office action at the sentence spanning pages 10 and 11 reads “the instant specification and claims do not provide any guidance as to what changes should be made to extend the instant specification one example to the infinite number of possibilities that are currently being claimed compound, i.e. a variant of a wild type major coat protein of a virus that includes a filamentous phage, a lambda phage, a Baculovirus, a T4 phage and a T7 phage, for the instant claimed a fusion protein” and thus does not suggest that a single example provides sufficient written description.

f. Applicants arguments regarding the rejection of claims 1, 8, 9, 11, 12, 30, 46, and 47 under 35 U.S.C. §102(e) as allegedly anticipated by Larocca et al. (U.S. Patent 6,451,527 B1) were considered and were found persuasive. The rejection of claims 1, 8, 9, 11, 12, 30, 46, and 47 under 35 U.S.C. §102(e) as allegedly anticipated by Larocca et al. is **withdrawn** in view of applicants arguments regarding the effective filing date for the disclosure of variant phage coat proteins by Larocca et al.

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g. Applicants arguments regarding the rejection of claims 1, 7-9, 11, 12, 30-32, 46, 47, 55, and 58 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Larocca et al. (U.S. Patent 6,451,527) in view of Li et al. (J. Biol. Chem., 1993,268(7): 4584-4587) were considered but are not found persuasive and is therefore **maintained** for the reasons of record. In addition, it is the examiners position that while the effective filing date for mutation of phage coat proteins disclosed only by the 6,451,527 Larocca et al. Patent is February 26, 1999, the rest of the disclosure relied upon for the rejection has an effective filing date of August 29, 1997. In addition, the shortcomings of Larocca et al. (variant phage coat proteins) are provided in the disclosure of Li et al. One having ordinary skill in the art would have been motivated to combine the teachings of Li et al. and Larocca et al. because Le et al. teaches that variant or mutant phage coat proteins can increase stability of various conformational states and thus regulate protein-protein association and packing motifs within membranes (please refer to abstract and page 4584, Introduction section).

h. For all the reasons above, the amendment does not place the application in better condition for allowance and/or appeal.

Future Communications

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amber D. Steele whose telephone number is 571-272-5538. The examiner can normally be reached on Monday through Friday 9:00AM-5:00PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doug Schultz can be reached on 571-272-0763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ADS

January 24, 2007